

LONDON: Honouring Judge Abdulqawi Ahmed Yusuf

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Emilia Onyema, senior lecturer at SOAS, Steven Finizio of WilmerHale and Malcolm Shaw QC of Essex Court Chambers

Over 100 legal practitioners and academics gathered at Wilmer Cutler Pickering Hale and Dorr for a seminar in honour of **Judge Abdulqawi Ahmed Yusuf**, an arbitrator and vice-president of the International Court of Justice. **Kay Weinberg**, an associate at the firm, reports.

The event focused on the status of arbitration as a mechanism for the resolution of international disputes involving African parties and was chaired by **Emilia Onyema**, senior lecturer at the School of Oriental and African Studies.

It was organised with the help of **Maryan Hassan**, Somali British lawyer and arbitration consultant.

While the focus was a keynote speech by Judge Yusuf – reported separately here – delegates also heard from **Steven Finizio** of WilmerHale and **Malcolm Shaw QC** of Essex Court Chambers, who addressed the enforcement of arbitral awards and treaty rights against African states and the varied success of arbitral tribunals in resolving territorial disputes on the continent.

Finizio's remarks drew on his experience of working on matters involving African parties. He noted that the diversity of legal regimes governing arbitration in Africa makes it difficult to generalise about issues affecting enforcement. The limited information available about judicial practice with regard to recognising and enforcing awards also creates uncertainty, which may affect investment decisions.

One of the most obvious problems in enforcing arbitral awards in Africa is the number of countries that have yet to sign or ratify the New York Convention, said Finizio. In sub-Saharan Africa only 28 out of 48 countries are bound by it, although this number is growing.

Of the countries that have ratified the convention, Finizio noted several that have outdated arbitration legislation, which creates further uncertainty about both enforcement and the level of judicial interference in arbitration to be expected.

Finizio went on to note the number of bilateral investment treaties that African states are party to by region. In addition to BITs, investors can rely on regional treaties to provide investment protections, including the South African Development Community (SADC) Protocol and a number of other treaties that may be less well known.

Finizio's slides are featured in the gallery below.

Shaw, who is a senior fellow at the Lauterpacht Centre at the University of Cambridge and professor of international law at the University of Leicester as well as a practising barrister, highlighted the need to take account of the socio-political context of inter-state boundary disputes to tailor a multidimensional approach to their resolution.

The core principle that once governed territorial dispute resolution in Africa – “respect the colonial boundaries” – has been subject to much discussion in recent years, he said. Sovereign practice is playing an increasingly important role in determining disputes over the validity and interpretation of the boundaries drawn by Europeans.

Shaw noted instances where the judicial resolution of territorial disputes by the ICJ has proved more successful than resolution by an arbitral tribunal. In particular, he compared the implementation of the 1996 decision of an ICJ tribunal in *Cameroon v Nigeria* and the 2002 decision of the Ethiopia-Eritrea Boundary Commission, an arbitral tribunal operating under the auspices of the Permanent Court of Arbitration.

As counsel for Cameroon in the ICJ case, Shaw was able to shed light on the reasons for the successful implementation of the court's decision. Owing to the difficult political situation in Nigeria, he said plans were put in place to facilitate implementation long before it was rendered, through a joint commission established with the involvement of the UN Secretary General.

Crucially, the ICJ included within its disposition Cameroon's commitment to guarantee the free exercise of human rights of Nigerian nationals living in the transferred territory, Shaw said. He described the implementation of the decision as “a model of the integrated modern approach to dispute settlement that the international community needs.”

The demarcation and delimitation of the Ethiopia-Eritrea boundary was a “less happy, less successful episode” for international dispute resolution in Africa. Because of the lack of party engagement the boundary has yet to be implemented and the dispute continues to fester, Shaw said.

In his speech, Judge Yusuf agreed that international judicial settlement is working for Africa states but arbitration “not so much” – in both the context of territorial dispute and investor-state disputes. In the latter context, he attributes the failure to a problem of legitimacy.

Yusuf warned that Africa's continued participation in the investor-state arbitration system depends on increased representation of African arbitrators on tribunals and more involvement by African countries in the formulation of bilateral investment treaties.

Failure to achieve this “may lead more African states to follow South Africa's approach of limiting their involvement in the investor-state settlement system, which would devalue the system,” he said.

In her concluding remarks, Onyema focused on the need for closer engagement between international law firms and law firms on the continent. She referred to the strong private sector in many African states, but commented that most African countries will have to open their legal markets to achieve the kind of “symbiotic relationship” with international firms that would increase local expertise in handling international disputes.

Building on Yusuf’s comments, Onyema characterised the appointment of African local counsel and African arbitrators as “almost a moral obligation”.

Cases mentioned

Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria) ICJ Rep. 1996, 13 (order of 15 March 1996)

Decision Regarding Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia, Eritrea-Ethiopia Boundary Commission, 13 April 2002